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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 09/02/2024

IN THE CROWN COURT FOR THE DIVISION OF BELFAST

THE KING

v

RITCHIE

SENTENCING REMARKS

HHJ NEIL RAFFERTY KC

Victim Impact Statement

I commence this sentencing exercise the way I commence all such sentencing exercises by dealing firstly with the Victim Impact Statement of JP. I remind all listening that JP, as the victim of a sexual offence, is entitled to life-long anonymity and no reporting should take place which would, or could, identify her.

She writes and tells me that she transferred to "The Willows" from the secure unit at Lakewood where she had been for 3 months due to her addiction issues and her fragile mental health following freeing her daughter for adoption. She says "When I first arrived at the Willows I had just turned 16 and was completely sober although my mental health was still very fragile." She indicates that one of the other girls told her that the defendant would get her drugs and she writes "...to be honest the thought of getting free drugs appealed to me". She describes how the behaviour progressed and states "I felt uncomfortable at the start but went along with it as I knew he would give me more drugs that way. Within weeks we were having sex in hotels." After the investigation started she states "I was getting the blame for reporting him and I felt I had no option but to leave and I ran away to Liverpool for 18 months..." where "The social services staff in Liverpool eventually managed to

get me to engage..." Tragically, she writes "I blamed myself for a long time." To her credit she tells me "I feel that I am back on the straight and narrow.... I'm once again sober and am on medication to help manage my mental health."

It is necessary to tell JP, as a victim, she expresses the commonly held thought that in some way she was to blame. She wasn't. What happened to her was a crime and the only one to whom blame attaches is the defendant. It is important that that is said so that she knows her voice has been heard. Victims sometimes wrongly think sentencing is all "about the defendant". It isn't but guidelines and issues affecting the defendant of necessity must be considered in any proper sentencing exercise and it is to that exercise that I now turn.

Facts/Background

[1] On the 14th March 2019, a young person (hereinafter referred to as 'MB') made a number of disclosures to a social worker to include that a male employee of Ardrath House, a Childrens Home in Magherafelt was, or had been, involved in a relationship with another young girl who was a resident of The Willows Childrens Home in Ballymena. It was asserted that the employee had engaged in sexual activity with the girl. An investigation was initiated.

[2] The girl was named and identified and is hereinafter referred to as 'JP'. JP was born on the 24th April 2002. The employee was the defendant Jonathan Ritchie, a support worker who had worked at The Willows Childrens home for a time. Ritchie was born on 22nd August 1994

[3] JP was spoken to and initially was reluctant to involve herself with assisting or providing any information, indeed she denied that she had any involvement with the defendant as described. JP subsequently changed her position and over the course of two ABE interviews on 30th August 2022 (between 2.17pm - 3.22pm and 3.35pm - 4.12pm) she disclosed how she and the defendant had had what she considered to be a sexual relationship from around October 2018.

[4] JP told police that she had previously resided at Lakewood Secure Unit in Bangor due to having had addiction issues and poor mental health. She went to live at The Willows Children Home in Ballymena in August 2018 at which time she would have been aged approximately 16 years and 4 months. JP told police that she and the defendant became acquainted and that he would have regularly taken her to hotels, with particularity to the Five Corners Hotel, Ballyclare. She recalled that she and the defendant had sexual intercourse for the first time around the end of October 2018. She explained the circumstances to police that, due to an unpalatable incident that had occurred at the Childrens Home involving another resident, she told the defendant that she did not want to return there. The defendant brought her to the Five Corners Hotel where he had a room booked. Whilst there the complainant told

police that he instigated sexual contact whereupon he removed her clothes before vaginal intercourse occurred. She told police that the defendant ejaculated inside her. JP was aged 16 years and 6 months whilst the defendant was aged 24 years and 2 months when they first had sexual intercourse. JP told police that she obtained the morning after pill the following day from Boots the Chemist, Belfast.

[5] During the Police investigation the defendant's bank records were looked at and it was noted that *inter alia* he had made a payment to the 'Five Corners Guest Inn' on 27th October 2018. A copy of the booking confirmation was received from the hotel which confirmed that a room was booked online on 23rd October 2018. This reservation was for a double room on Friday 26th October 2018. Checks were also made with The Willows which confirmed that JP had been reported as missing on 26th October 2018 after failing to return. She was missing until the following day when she contacted staff to collect her from Belfast.

[6] JP went on to describe how she had sexual contact and intercourse with the defendant many more times in the 6-month period thereafter. She told police that she had been taken to the Five Corners Hotel by the defendant at least 30 times of which "At least 13,14" "maybe 15" "a good number of occasions" resulted in unprotected sexual intercourse resulting in the defendant ejaculating inside her.

[7] JP also told police about an incident of sexual intercourse in a Health & Social Services Trust rented residence referred to as The Cottage. The complainant also told Police about occasions when she was in the defendant's car that he asked her to perform oral sex and she obliged on three of four occasions. The defendant is not alleged to have ejaculated into the complainant's mouth. JP described other occasions when the defendant would have touched her breasts and her vagina with his hands/fingers.

[8] The defendant's phone was examined. There were messages to and from JP with particularity to a message on 19th March 2019 asking her to contact him ASAP and another stating to ring twice as calls don't go through the first time. This was in direct contradiction to the defendant's assertion that he had no contact with JP since he worked at The Willows. Two videos of Ritchie and JP in a bed together were located on his phone. In the first video both are clothed on top but then appear to only be wearing pants. The second video shows Ritchie lying on the bed with JP on top of him. In one of the videos the defendant is heard to make the statement "yeoh, we're in the Cottage". Police visited The Cottage, the property rented by Ardrath to provide respite for some of its residents on a one to one basis. Photographs have been taken (PGS1) and Police believe that the bed in the videos on defendant's phone are those in The Cottage.

[9] The defendant was arrested on 20th March 2021. An initial interview was carried out to establish the nature of his work, places of work and his relationship with JP. He stated that he knew her only through a work capacity. He stated that he did not socialise with her outside of work, would never have stayed with her other than on a

work basis and he denied the allegation that had been made. In interviews two and three, the defendant denied ever staying in the Five Corners Ballyclare with or without JP. Transaction from his bank statement showing payment to Five Corners was put to him together with the evidence that JP had been missing from The Willows Childrens Home on the same date. The defendant made no comment. In interviews four and five, the defendant provided a pre-prepared statement read by his Solicitor denying the allegations. The defendant replied no comment to all questions put to him. Photos and videos from his phone download were shown to the defendant and he made no comment.

[10] On the 20th of June 2023, I heard a No Bill application with respect to Counts 8 and 9. I granted the application and the defendant pleaded not guilty to the remaining counts. It was intimated by Mr Turkington BL, who appeared for the defendant, that he and Mr. McAleer BL, who appeared for the prosecution, were in active discussions. On the 4th of October 2023 the defendant pleaded guilty to Counts 1, 2, 3, 4 and 5. The remaining counts were left on the books. It was intimated that Counts 1 to 5 were specimen counts reflecting the course of conduct of the defendant.

Prosecution Submissions

[11] The prosecution assert that in addition to the defendant having been in a position of trust, the complainant was a vulnerable child and that there was a level of coercion. In oral argument they confirmed that the provision of alcohol and drugs had been a feature of the offending. The prosecution asserted that the following aggravating and mitigating features were present:-

Aggravating/Mitigating Factors

The Prosecution say the following aggravating factors apply:-

- (i) The vulnerability of the complainant in that she was a looked after child with a history of addiction and mental health issues;
- (ii) The position of trust occupied by the defendant (although I note that the prosecution properly concede that care should be taken to avoid double counting as this is an ingredient in the offence);
- (iii) Degree of planning – Booking hotels etc;
- (iv) Frequency of offending;
- (v) Full penetrative vaginal intercourse with ejaculation;
- (vi) Oral penetration;

(vii) Grooming behaviours;

(viii) Images of the victim taken and stored on his phone.

Mitigating Features

The defendant pleaded Guilty. Mr. McAleer properly concedes that whilst the defendant's plea was not at the earliest opportunity, it was made prior to the matter being listed for trial. He advises that discussions had been ongoing between Counsel for a period prior to re-arraignment. The prosecution also confirm that this was a welcome plea.

Defendant Circumstances

[12] I have received and considered references; a psychologist report; a pre-sentence report; a book of authorities; and a written submission on sentencing from Mr. Turkington BL. I will briefly set out some, but by no means all, of the contents. The defendant is currently 29. After successfully studying A levels he attended Liverpool University and completed a degree in Special Educational needs. He gained employment through an agency and commenced working with the Trust who were responsible for the care of JP. The references speak highly of him as an individual and I am exhorted to allow the defendant's family to put "all this behind" them and move on. Equally, the defendant is described as "very reliable" and also "a steady, trustworthy and diligent employee". All the references, however, acknowledge the gravity of the defendant's wrongdoing and in that I must agree with them.

[13] Dr. Dwyer in his report notes that the defendant presents as "fairly unskilled socially. He said he has had difficulty with adult friendships and has had no real girlfriends, even though he would have liked to. It seems likely that his social difficulties have lead to a vulnerability which relates to his involvement in the index offence..." I pause simply to note that Dr. Dwyer's use of the word "vulnerability" is unfortunate and may not have been the adjective he was seeking given his later comments in the final section of his report. In that section he states:

"Jonathon is of average intellectual ability but has an unusual cognitive profile.

Despite his stature he presents as younger than his chronological age and is socially immature.

He took employment in a Childrens Home with limited experience and received no apparent training.

Staff at the home, made use of his popularity with girls perceived to be difficult, to ask Jonathon to take girls out of the Home on a frequent basis.

He was given an inappropriate amount of freedom and received no appropriate supervision or support.

His naivety and absence of experience of relationships with females, impacted upon his judgment, relating to inappropriate behaviour on his part.”

Sexual and emotional immaturity seems to me the point that Dr Dwyer is seeking to make. The description of the defendant as “vulnerable” is simply not appropriate. It is to be remembered that the victim in this case was a highly vulnerable Looked After Child. It is she who was vulnerable, not the defendant. Nevertheless, I note that the defendant was 22 at the commencement of his employment and has the features noted by Dr. Dwyer.

[14] The Pre-Sentence Report is detailed and sets out the defendant’s circumstances. It states, “During interview he did not disclose anything untoward regarding his sexual interests or behaviours during his adolescent years and prior to offending. His offending however indicates a period of grooming, sexual preoccupation, using sex as a means of validating his self-worth and a significant breach of professional boundaries in order to meet these sexual needs of which will be further explored in the offences analysis”. In the offence analysis there are notable portions. “Mr Ritchie admits that he had appropriate training for his role as a support worker and was fully cognisant of the vulnerabilities of the victim and others whom he was working with”. “He acknowledges that he was spoken to by management about his relationships with the young people given what appeared to be an obvious over investment on his part and the risk of overstepping boundaries. Despite such concerns having been brought to his attention, he continued to develop these relationships which subsequently turned sexual.” These statements from the defendant stand in juxtaposition with the final commentary provided by Dr Dwyer. The report does, however, pick up on the theme that the defendant is emotionally and sexually immature but also sets it in offence based context. “Mr. Ritchie describes this period of his life as lacking in self-esteem and having issues with his emotional health. He believes that he justified his actions knowing the positive impact this would have on his self-worth and of believing that he had a genuine bond with the victim in the absence of having age appropriate peers. Mr Ritchie in this regard presents with distorted thinking around his offending and his rationale does not support the lengths he went to in order to ensure a level of dependency on him from the victim and of the fact he was willing to use her vulnerabilities and addiction as a method to ensure her compliance.” He is assessed as a low likelihood of general reoffending and as in the moderate category for supervision using the STABLE-2007 tool for sexual offenders. Of note, the Risk Management Meeting in assessing the question of “dangerousness” stated “...there are sufficient protective factors in place and proposed risk management strategies to reduce the probability of similar offending in the near future.” I note that one of those risk management strategies is a suggested Sexual Offences Prevention Order which Mr. Turkington BL has to some extent suggested should be modified. I will return to this under ancillary orders.

Sentencing Guidelines

[15] Both Counsel have referred me to numerous authorities and I am indebted to them for their endeavours. None, however, are on point save, perhaps for *R v Wilson* [2007] EWCA Crim 2762 which involved a consensual relationship between a teacher and a pupil. A distinguished court of Lady Justice Hallet (as she then was) and Eady J. (as he then was) considered the case. The defendant fully cooperating and seeking before sentencing his own counselling; his new relationship with a child on the way; his early plea; the positive reports of group work sessions; the full remorse and acceptance of all responsibility allowed them to take a "merciful course" and reduced the 10 month sentence 6 months (time served). I am satisfied for reasons which will become clear that *R v Wilson* is of little assistance in this case.

[16] Mr Turkington BL in his written submissions referred me to the Definitive Guidelines for England and Wales published by the Sentencing Council. He submitted that this case was a "1A" case and the Starting Point is 18 months with a sentencing range of 1 to 2 years. He then submitted that the Pre-Sentence Report suggests that the defendant requires a supervised treatment programme which will be at least 2 years. Mr Turkington BL submits:-

"It is understood that the Community Sex Offender Groupwork Programme (C-SOGP) requires at least 2 years supervision. If this is correct, the sentencing dilemma for the Court is that the commensurate period of imprisonment warranted does not allow for the supervision necessary to rehabilitate the accused and protect the public going forward. In the circumstances the LTJ is urged to prioritise a sentence which focusses on rehabilitation and the protection of the public rather than leave the accused untreated".

[17] The oral submissions on this were telling and Mr Turkington BL properly conceded that the Definitive Guidelines are predicated on the commission of one offence. This case involves 5 specimen counts covering a course of conduct over several months. Equally, when referred to what made it a "1A" he properly conceded that in terms of Harm penetration of the vagina made it a "Category 1" offence. Thereafter, "Significant degree of planning"; "Use of alcohol/drugs on victim to facilitate the crime"; and "Grooming behaviour used against the Victim" were all present when any one of them would indicate "Category A" culpability. Turning then to the "Aggravating and Mitigating" factors the following aggravators are present. Ejaculation; Location of offence (The defendant used the Cottage which was Trust premises for his offending); and the victim was compelled to run away to Liverpool by her reaction to the offending. In mitigation, the following factors are identified. No previous convictions; Remorse (I do accept that there is some remorse present); Age and/or lack of maturity where it affects the responsibility of the offender.

[18] I have set out above the Definitive Guidelines but I have done so cognisant of the “health warning” provided by the Northern Ireland Court of Appeal. In *R v McGaughey & Smyth* [2014] NICA 61 at paragraph 22:-

“[22] In Northern Ireland we have a small Crown Court judiciary who have the benefit of regular meetings with colleagues where sentencing issues can be discussed both formally and informally. Sentencing is carried out exclusively by full-time judges most of whom have had considerable experience of criminal law before going on the Bench. We recognise the assistance to be derived from the aggravating and mitigating features identified by the Sentencing Council in its guidance but we have discouraged judges and practitioners from being constrained by the brackets of sentencing set out within the guidance”.

The eminent good sense of the Court of Appeal in identifying the dangers of a mechanistic approach is brought home in this case. The “tools” of analysis identified in paragraph 17 above are valuable provided they are not then mechanistically manipulated into some sort of legal calculus where “1A” equates to 18 months where in reality there are specimen counts and significant aggravating factors.

Analysis

[19] The “mischief” underlying this offence was the perceived lacuna left in the law whereby a teacher was criminally liable for offending involving a pupil but someone in equal authority such as a sports coach or social worker wasn’t. By this enactment Parliament’s intention was to close that lacuna. Mr. Turkington’s submission that it criminalises “otherwise consensual” sexual activity may, on one view be correct, but it must be understood that this was done deliberately by Parliament to provide protection for young people. In terms of analysis it is necessary to set out the aggravating and mitigating features and establish a starting point. There are 5 counts, each a specimen, reflecting a course of conduct. It is clear that totality is the guiding principle and I will sentence concurrently to allow for clarity of calculation. I make it clear that if this is criticised as overly punishing an individual count then I would have reached exactly the same sentence by consecutive sentences.

[20] When assessing Breach of Trust it is important to guard against double counting. However, it is equally important to note that the assessment of this will often involve a qualitative assessment. To slavishly tick a box and regard this factor as dealt with is precisely the mechanistic approach which the Northern Ireland Court of Appeal have warned against. Some positions/breaches of trust will be more onerous or egregious than others. The vulnerability of the complainant will often be a factor that runs alongside this assessment. In this case I am satisfied that there was a high degree of vulnerability on the part of JP and that the position of trust was significant. However, that is somewhat reduced by the age of the defendant and the inappropriate level of access and unsupervised contact he was afforded in what should have been an assistant or junior role. I am also satisfied that there was, to an

extent, a significant amount of planning which went into the defendant maintaining and continuing his inappropriate behaviour over several months. He booked hotels and identified opportunities to use Trust facilities such as the Cottage. There was frequent offending over several months which involved vaginal and oral penetration with ejaculation. Whilst photographs were taken there is no suggestion that these were for onward dissemination nor for any other untoward purposes. Lastly, the Prosecution have referred to "grooming" behaviours. It is important to reflect what these actually involved. The defendant provided alcohol and drugs to facilitate his offending. This is in the context of the victim being a young woman who had gained sobriety in Lakewood and who was known to have addiction issues. In my view this is a significant aggravating factor.

[21] In terms of mitigation, the defendant pleaded guilty before trial. It was by no means an early plea and whilst he is entitled to a significant reduction it will not be a full reduction. The fact that the plea was "welcome" will be included in my consideration. The defendant was 22 and was inexperienced in such an environment and I am satisfied that to some extent his emotional and sexual immaturity was a factor in his offending. In that regard there is a tension between the findings of Dr. Dwyer and the author of the pre-sentence report. On balance I am satisfied that the defendant is emotionally and sexually immature and may well have deluded himself that his "relationship" with JP was something more than the inappropriate behaviours that it was. In addition, the warning given to him is a double-edged sword. Whilst it could be thought of as an aggravating factor, it actually shows that those supervising him didn't follow it up nor seek to drill down into what was going on. It tends to show that he was given an inappropriate level of unsupervised access. He has previous good character, no convictions and the character references speak highly of him. He has lost any prospect of pursuing the "career" for which he trained.

Sentence

[22] I am satisfied that given the aggravating and mitigating features identified above that the totality of the sentence that I would have imposed had he been convicted by a jury would have been 4 and a half years. Deterrence must, in my view, be a factor but I have mitigated that so far as I regard possible in the circumstances and I make it clear that any argument that this is 6 months off the maximum is erroneous because it ignores the potential for consecutive sentencing based upon totality. What reduction then applies? His plea was "welcome" but it was far from early. I assess the appropriate percentage of reduction as 20% and then step back and adjust for totality. As stated, I will sentence each count concurrently for ease of administration of the sentence. On each Count the sentence will be 3 and a half years. I have reviewed the pre-sentence report, and whilst a minimum period of post release supervision to allow for the "Alderwood" programme is not specified, I am aware that the minimum period required is 2 years. For that reason, I

am satisfied that deterrence and rehabilitation are both met by splitting the sentence of 3 and a half years as 18 months custody followed by 2 years statutory supervision. Whilst licence conditions are out-with my order I commend those contained in the pre-sentence report.

Ancillary Orders

[23] Since the sentence imposed exceeds 30 months you will be subject to the notification requirements of the Sex Offenders Register for an indefinite period. In addition you will be disqualified for working with children and vulnerable adults and may be placed on the Barring list.

[24] I now turn to the question of a Sexual Offences Prevention Order ("SOPO"). Mr Turkington BL has suggested that some of the terms may not be necessary or proportionate given that the defendant will effectively never be permitted to work with children or vulnerable adults again. In *R v O'Hara [2021] NICA 1* the Court set out and reinforced the statutory test at paragraph 34:-

[34] In summary, a court may make a SOPO where it deals with a defendant in relation to any of the offences listed in Schedule 3 or Schedule 5 to the 2003 Act. The pre-requisite to making such an order is that the court "... is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant".

As indicated earlier, the pre-sentence report risk assessment is predicated upon their being sufficient safeguards in place going forward. Thereafter, the author specifically references an application for a SOPO in the terms suggested. In addition, the report indicates that the defendant will require to meaningfully engage with post-release supervision. I have reviewed each proposed condition and am satisfied that each is proportionate and necessary to protect the public. The period of custody and statutory supervision will be 3 years and the defendant is still a young man. The minimum period that I deem necessary for the duration of the SOPO is 8 years.

Offender levy of £50-00.